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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,252	04/05/2001	J. Charles Taylor	39292/256238	5171
30559	7590	09/19/2007	EXAMINER	
CHIEF PATENT COUNSEL SMITH & NEPHEW, INC. 1450 BROOKS ROAD MEMPHIS, TN 38116			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	
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			09/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/827,252

Applicant(s)

TAYLOR ET AL.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 36-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 36-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

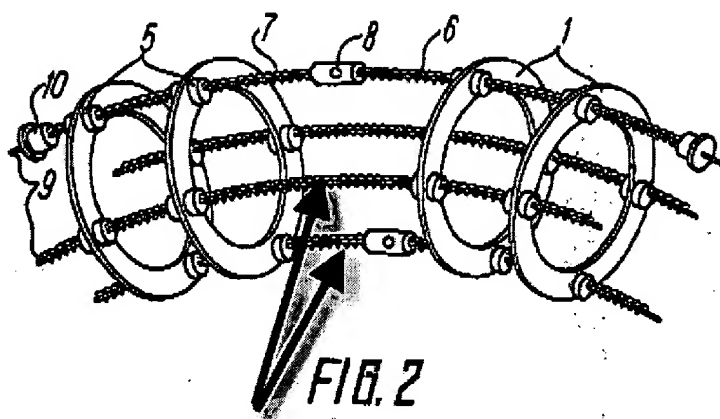
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 12-14, 36-42 and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,977,397 to Kalnberz et al.

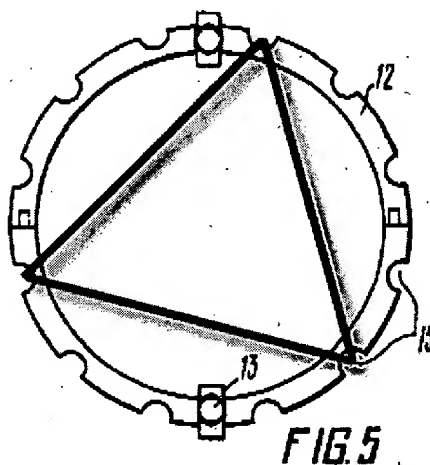
(claims 1, 36 and 45) Kalnberz discloses an orthopaedic spatial fixation device comprising a plurality of fixation ring plates **12**, wherein each plate includes a body portion having attachment structures **15** positioned therein, whereby said attachment structures are substantially positioned along an arc of the circle defined by the diameter of the fixation ring plate, wherein at least some of the attachment structures are in sets of three (or more), are capable of being spaced substantially 120 degrees apart from each other along an arc of the fixation plate (as illustrated in the attached Fig. 5 below), are substantially equally spaced apart, and have substantially uniform sizes; wherein rotating a first one of the fixation plates substantially 120 degrees from a starting position in a plane substantially parallel to another one of the fixation plates causes the first fixation plate to present the same geometrical arrangement of attachment structures as the geometrical arrangement of the attachment structures of the another plate, wherein at least two of the fixation plates are connected to each other with a plurality of struts **4** such that at least one of the struts connecting the at least two plates

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is not substantially parallel to at least one other of the struts connecting the at least two plates (see attached Fig. 4 below).



NON-PARALLEL STRUTS



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(claim 2) see the rejection above and the following: the device comprises bone pins **3** and the struts **4** are attached to the attachment structures **15** and have adjustable lengths via nut **8**.

(claim 3) As shown in Fig. 5 above, the attachment structures on at least one of the plates are one hundred twenty degrees (120°) apart.

(claims 4-6) One rotation of one plate one hundred twenty degrees (120°) relative to an adjacent plate results in the same alignment of adjacent attachment structures as before such rotation of the plates (see Fig. 5 above); wherein the plates are symmetrically configured so that if one plate is placed over an adjacent plate, the attachment structures in each plate can be aligned (the fixation ring plate has attachment structures every 15 degrees); wherein the plates are symmetrically configured so that one plate can be flipped over without affecting the alignment of adjacent attachment structures.

(claim 7) Fig. 2 shows at least two fixation ring plates and at least 3 attachment structures.

(claim 9) The attachment structures are holes in the fixation ring plate.

(claim 12) The fixation ring plate shown in Fig. 5 has markings, such as the connection point between the two halves or needle clamp **13**, which could be used as reference point to designate positions for the attachment structure holes.

(claims 13 and 14) There are multiple plates in the device of Kalnberz, wherein the second set of plates **1** are not identical to that of plate **12**.

(claims 37-42, 46 and 47) Rotating disc **12** every 15 degrees does not change the geometrical arrangement of the attachment structures; wherein there are more than six attachment points the fixation plate is a ring; wherein the struts can be adjusted to effect the alignment of the plates; where the attachment structures are positioned along a circle of arc; wherein the fixation system is adapted to be positioned on a patient; wherein a needle accessory is adapted to be attached to the fixation plate.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 8, 43, 44 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalnberz et al., as applied to claim 1 above.

Kalnberz fails to the system comprising six struts. However, Kalnberz discloses a fixation plate **12** that is capable of supporting at least six struts. In fact, as seen in Fig. 5, the fixation plate is capable of supporting twelve struts. Kalnberz also discloses that

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additional struts can be provided to add stability to the system (col. 5, lines 59-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Kalnberz to use at least six struts because the addition of the struts would provide stability to the system.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalnberz et al., as applied to claim 1 above, and further in view of US 5,275,598 to Cook.

Kalnberz fails to disclose the attachment structure being pegs or clamps. However, it is well known in the art to have the pegs or clamps place in the attachment holes in order to secure the wires. For example, Cook discloses pegs or clamps in form of nut and pin (232,234, 242,244) for securing the wires. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include pegs or nut and pin in order to secure the wires to the plates/rings.

Allowable Subject Matter

7. The indicated allowability of claims 8, 43 and 44 is withdrawn in view of the newly discovered reference(s) to Kalnberz et al. Rejections based on the newly cited reference(s) are provided above.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

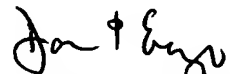
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Darwin P. Erezzo
Examiner
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de